IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Rajendra Singh
Versus
State and ors.

S.B. CIVIL WRIT PETITION NO.1336/1999

Date of Order : 23 July, 2007.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri R.S. Mehta for the petitioner.
Shri H.V. Nandwana, Deputy Government Advocate for the State.
Shri Sudhanshu Kasliwal for I.O.C.
Shri Sumit Bishnoi for respondents.

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Reportable

Under challenge in this writ petition are the Circular/order dt.4/7/1989 (Annexure-1) passed by the State Government and the allotment orders dated 13/2/1999 and 17/2/1999 issued by the respondent-JDA in favour of respondent Indian Oil Corporation (for short, 'I.O.C.') thereby allotting

six plots of land for installation of six retail outlets in the city of Jaipur.

According to the petitioner, he was interested in setting up petrol pump and he had sufficient funds to do so but he could not locate the site for petrol pump. Such sites are required to be identified and indicated in the Master Development Plan and Zonal Development Plan in a development scheme and accordingly the identification of plots made by the J.D.A. are required to be put to a public auction. The State Government has for this purpose framed rules known as Rajasthan Urban Improvement Trust (Disposal of Urban) Rules, 1974 (for short, 'Rules of 1974') which came into force w.e.f. 9/1/1975. The J.D.A. has adopted the same Rules. Rule 15 of the Rules of 1974 deals with allotment and sale of non-residential plots by public auction. The State

Government has issued an order dated 4/7/1989 under the said Rule 15, which contain guidelines to the effect that land for the retail outlet is to be allotted only to a person holding license and permission. The J.D.A. after due notice held a public auction for the land situated in Malviya Nagar, Jaipur. The bid was not accepted and the J.D.A. ultimately allotted the site by negotiation. Action of the J.D.A. was challenged before this Court in a writ petition filed by one M/s.Guru Nanak Tubewell Pvt.Ltd. The writ petition was dismissed by the Single Bench which judgment was challenged in appeal being D.B. Civil Special (Writ) No.814/1994. Appeal was allowed vide judgment dated 19/5/1995 holding that the J.D.A. could allot land by way of public auction only. In view of this, learned counsel for the petitioner submits, the guidelines given by the State Government in the Circular dated 4/7/1989 are

totally arbitrary and illegal. There can be no such restriction that an allotment of the land for establishing the petrol pump could be made only to a person holding license or permission to install the same. Such requirement can be insisted upon only at the time of allotment of site but not on the date when the auction is being held.

Grievance of the petitioner is against the allotment of certain lands by the J.D.A. to the I.O.C. for installing six retail outlets. It is contended that not only the I.O.C. may be interested in buying the land in question but there are many other companies like H.P.C.L., B.P.C.L. and I.B.P.L. Besides the above companies, many other citizens like the petitioner could be also interested in participating in the auction if only they had knowledge that J.D.A. was intending to sell the land. The

petitioner was keenly interested in buying the land but he was debarred from participating in the auction because these six plots were sold by private negotiations. When he came to know from certain news item published in Rajasthan Patrika dated 11/3/1989 about this illegal act of the J.D.A., he went to the office of the J.D.A. for collecting relevant papers.

It is against the backdrop of these facts that the present petition has been filed by the petitioner with the aforesaid prayers.

I have heard Shri R.S. Mehta, learned counsel for the petitioner, Shri Sudhanshu Kasliwal, learned counsel for I.O.C. and Shri Sumit Bishnoi, learned counsel for the State and the J.D.A.

Shri R.S. Mehta, learned counsel for the petitioner argued that according

to Rule 15 of the Rules of 1974, it was the mandatory requirement on the part of the J.D.A. to issue a notice for auction of the land. Circular of the State Government dt.4/7/1989 in so far as it puts restriction on the right of the petitioner to participate in the public auction for the reason that he does not have the license and permission to set-up a petrol pump is contrary to the spirit of law. No such restriction can be imposed at the time of auction of land particularly when the actual allotment has to be made at a later point of time. The J.D.A. cannot insist upon production of license /permission at the stage of auction. A public sector undertakaing cannot be distinguished from an ordinary citizen inasmuch as no priority can be given to such oil company just because it happens to be owned by the Government of India. They should also be required to participate in the open auction. The land in

question is a public property which cannot be sold through private negotiation. Market price of the land in question at any point of time was not less than Rs.12,000/- to Rs.15,000/- per sq.mtr. and such land could easily fetch this in an open auction.

In support of his aforesaid contention, learned counsel for the petitioner has placed reliance on the judgment of the Division Bench of this Court in **M/s.Guru Nanak Tubewell Pvt.Ltd. Vs. The State of Rajasthan and others in D.B. Civil Special Appeal No.227/1995 decided on 19/5/1995** wherein it was held that the site of the petrol pump could be sold only through a public auction. On the strength of the aforesaid judgment, learned counsel argued that allotment of the lands to the I.O.C. by the J.D.A. is not only contrary to Rule 15 of the Rules of 1974 but also against the authorotative

pronouncement of law made by this Court. The impugned Circular dated 4/7/1989 (Annexure-1) and the allotment orders are, therefore, liable to be quashed and set-aside.

On the other hand, Shri Sudhanshu Kasliwal, learned counsel appearing for I.O.C. opposed the writ petition and argued that the petitioner does not have any *locus-standi* to file and maintain the present petition because neither was any license nor permission given to him nor was any Letter of Intent (for short, 'L.O.I.') issued in his favour for establishment of retail outlet by any oil company. He further submits that against the action of the J.D.A., he had an alternate remedy of filing reference application before the Jaipur Development Authority Appellate Tribunal, Jaipur under the provisions of Section 83 of the Jaipur Development Authority Act, 1982 (in short, 'Act of

1982'). The present writ petition is in the nature of public interest litigation which cannot be entertained at the instance of the petitioner. Even the petitioner has also not disclosed as to whether he ever applied for allotment of retail outlet in response to any advertisement issued by any of the oil companies. Rule 15 of the Rules of 1974 provides the manner in which the lands shall be disposed of by the J.D.A. and in regard to the land reserved for petrol pumps, cinemas, hotels and godowns, it is always not incumbent upon the J.D.A. to allot such lands by way of a public auction and in doing so, the J.D.A. is guided by the directions issued by the State Government from time to time. The State Government has by the Circular dated 4/7/1989, issued guidelines to the effect that the land for the aforesaid purposes including that of petrol pump shall be allotted at the commercial rate. The respondents

have purchased five sites of the land on prevailent market rate and not on the basis of reserved price for commercial lands. The allotment was, therefore, perfectly valid in law. Shri Sudhanshu Kasliwal further argued that the respondent I.O.C. is a Government of India Undertaking incorporated as a company under the Companies Act, 1956 (for short, 'Act of 1956') and is discharging its functions as an instrumentality of the State by providing facilities to the motorists. It is controlled by the Government of India. The allotment made to I.O.C. cannot therefore, be compared with such similar allotments made to individuals. I.O.C. is working in the public interest as per policy of the Government of India. The Division Bench's judgment in M/s.Guru Nanak Tubewell Pvt.Ltd.,supra is distinguishable and does not apply to the facts situation of the present case.

Shri Sudhanshu Kasliwal has clarified that there are two types of dealership called 'A' site and 'B' site. A site dealerships are those where the land and the equipments belong to oil company whereas in the case of B site, the land belongs to dealer and the equpments are owned by the oil company. In order to set up the petrol pump therefore the oil company can itself acquire the land in so far as A site is concerned. Number of retail outlets to be established in this category throughout the country is decided by the Ministry of Petroleum and Natural Gas in consultation with all the oil companies. Decision for establishment of retail out at the relevant point of time was therefore not the decision of the I.O.C. but was collective decision. Such course is adopted mainly to provide facility of petrol pumps uniformly at very nook and corner of the country. The allotment was made in favour of the I.O.C. keeping in

view the provisions of Rule 15 of the Rules of 1974 as also the Circular dated 4/7/1989. Allotment of land for petroleum products has to precede the issuance of L.O.I. in the case of private individuals. In the present case, all these sites are being operated as A site, therefore the company decided to establish the petrol pump itself on the ear-marked plots and then appoint some dealer on license basis. There is therefore no question of producing any license, permission or L.O.I. in so far as oil companies are concerned because such company is itself establishing the retail outlet.

Shri Kasliwal further submits that in order to meet the increasing demand of other petroleum products, the I.O.C. had to set up new retail outlets. It approached the concerned authorities for allotment of the land for new retail outlets in Janta Colony, Vaishali Nagar,

Gopalpura Bye-pass, Mansarovar, Malviya Nagar, Jhotwara, Ambabari, Shashtri Nagar, Vidhyadhar Nagar, Hanuman Nagar, Khatipura, Sanganer/Sitapura on National Highway No.12 etc. However, the J.D.A. after due deliberations and looking to the public welfare and interest, allotted various sites such as; Ashram Marg, Tonk Road Jaipur, Malviya Nagar Sector No.7, Sahakar Marg, Jyoti Nagar Jaipur, Govind Marg, Opp. Mental Hospital and Janta Colony at the prevalent market price. Shri Kasliwal explained that on the five sites allotted by the J.D.A., the I.O.C. has made huge investments. It is submitted that for the site at Govind Marg (Adarsh Nagar Location), the I.O.C. has paid a sum of Rs.68,62,881/-, for site at Vaishali Nagar Rs.1,00,12,683/-, for site at Gopalpura Byepass (Mansarovar Location) Rs.56,77,878/-, for site at Malviya Nagar Rs.78,86,225/- and for site at Sahkar Marg Rs.1,68,93,12/-. So

far as the sixth site is concerned, the I.O.C. did not accept the same as the same was located at Ashram Marg which did not have commercial potential commensurate with required investment. In addition to above investments, the I.O.C. has also incurred considerable expenses in providing equipments and other infrastructure in the sum of Rs.75 lacs in so far as site at Govind Marg (Adarsh Nagar Location) is concerned, approximately, Rs.1 crore for the site at Vaishali Nagar, Rs.40 lacs for the site at Gopalpura-bye-pass (Mansarovar Location), Rs.80 lacs for the site at Malviya Nagar and Rs.1.70 crores for the site at Sahkar Marg. Out of above five retail outlets, three retail outlets such as; Govind Marg (Adarsh Nagar Location), Vaishali Nagar and Gopalpura-bye-pass (Mansarovar Location) were allotted to the physically handicapped candidates whereas fourth one is being run as COCO (company owned company

operated). It is only fifth petrol pump at Malviya Nagar which is in the open category. It is proclaimed policy of the I.O.C. to procure the land from the various local authorities on prevalent market price and in past also, especially in the year 2000, three such lands were procured by the I.O.C. and allotment of petrol pump on which was made to the widows of martyrs of the Kargil war and Parliament attack.

Shri Sumit Bishnoi, learned counsel for the respondent-J.D.A. submitted that by alloting the land in qustion in favour of the I.O.C., the J.D.A. has not in any manner violated the provisions of Rule 15 of the Rules of 1974 nor any other provisions of the relevant law. The Government has issued guidelines in its Circular dated 4/7/1989 and accordingly following the guidelines of the State Government, the J.D.A. has rightly made allotment of

land for setting up petrol pump to the I.O.C. The allotments have been made at the market price which were prevalent at the relevant point of time and not on the reserve price basis. Therefore, no undue favour has been shown to I.O.C. He further argued that the oil company like I.O.C. is a Public Sector Undertaking and allotment made to it by way of negotiation cannot be treated at par with those made in favour of the individuals. In fact, Shri Bishnoi argued that public auction in respect of different sites were held on 26/9/1995, 21/3/1997, 25/3/1997, 28/3/1997 and 30/8/1997 as per the Goverment Circular dated 4/7/1989 but since there were no buyers because no person was having L.O.I. of that particular site, the plots could not be auctioned. It is contended that even if public auction for these five sites for installing petrol pumps would have been held, the petitioner could not have participated

in auction proceedings for any of the sites because he did not qualify the requirement of the Government Circular dated 4/7/1989. Action of the J.D.A. in making allotment of the five sites in question to the I.O.C. was perfectly bonafide and absolutely lawful.

I have given my earnest consideration to the rival arguments and scanned the materials on record.

So far as the Cirular dated 4/7/1985 is concerned, the condition of that Circular cannot be applied to the I.O.C. because it is neither required to have permission nor even the L.O.I. to setup these retail outlets. It is not denied, that 'A' sites are being set up by the oil companies on the land are owned by themselves. The I.O.C. in the present case for setting up retail outlets on these sites is having its own land on which it has created

infrastucture by investing huge sum of money. Besides, it has also paid a substantial amount as price of the land. The petitioner cannot compare himself with the I.O.C. in the matter of allotment of the sites in question. I.O.C. is a public-sector undertaking fully owned by the Government of India. It is discharging the functions of distribution and supply of the petrol and other petroleum products thereby serving the public demands as per policy laid down by the Government of India from time to time which is in furtherance of the interest and welfare of the public. I.O.C. has allotted 'A' sites for setting up retail outlets to the physically handicapped candidates and one such site is being run by itself as COCO. Only one of them has been allotted in an open category. I do not find any malice either in the facts or in law in the action of the J.D.A. in deciding to allot these sites to the

I.O.C. The action of the J.D.A. in making allotment of five plots in question to the I.O.C. for setting up retail outlets cannot be described either as arbitrary or unreasonable. J.D.A. has not in any manner violated Article 14 of the Constitution of India.

So far as the judgment of the Division Bench of this Court in M/s.Guru Nanak Tubewell Pvt.Ltd. (supra) is concerned, that was a case in which the allotment by negotiation was made in favour of a private person and not to a Government of India Undertaking. The aforesaid judgment was based on the facts situation obtaining in that case where allotment of petrol pump/retail outlet was made in favour of individual and, therefore, ratio of that judgment does not apply to the facts of the present case.

In view of the discussions made above, I do not find any merit in the writ petition. The same is, therefore, dismissed with no order as to costs.

(MOHAMMAD RAFIQ), J.

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